IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH POUSHA, 1928

Bail Appl..No. 7746 of 2006()

AGAINST THE ORDER IN BA.6154/2006
CMP.1860/2006 of J.M.F.C.-II, HARIPAD
CR.NO.85/06 OF KAYAMKULAM EXCISE RANGE.
.....

PETITIONER/3RD ACCUSED:

AJIKUMAR @ AJI, S/O.PRABHAKARAN,
CHAPRAYIL VEEDU, KEERIKKAD,
KARTHIKAPPALLY TALUK.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENT: COMPLAINANT:

STATE OF KERALA (EXCISE INSPECTOR,
KAYAMKULAM RANGE) REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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BAIL APPLICATION NO.7746 OF 2006

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DATED THIS THE 5th DAY OF JANUARY, 2007

O R D E R

Petitioner who is the 3rd accused in C.R.No.85/06 of Kayamkulam Excise Range for an offence punishable under section 55 (a) of the Abkari Act, seeks his enlargement on bail. He was arrested on 9.8.2006.

2. Petitioner's earlier application for bail filed as B.A.No. 6154/06 was dismissed by this court on 25.10.2006 with a direction to the committal court to expedite the trial and with a direction to the Sessions Court also to dispose of the Sessions Case. Subsequently, as per Crl.M.A.No.7215/06 in B.A.No.6154/06, the petitioner sought for a direction to delete the direction to dispose of the sessions case within two months in view of the subsequent event of the Investigating Agency starting further investigation. At that stage, the petitioner did not make any further request for bail. His subsequent application for bail filed as B.A.6880/06 was also dismissed by this court on 4.12.2006 after noticing that the Investigating Agency had started investigation. It is thereafter that the petitioner has now filed the present application for bail.

3. Learned Public Prosecutor opposed the application.

4. The facts of the case will reveal that on 16.7.2006 at 10 AM the Excise Party headed by the Excise Inspector, Kayamkulam came across 10265 litres of spirit in 294 white plastic cans each of 35 litres capacity in the building of the first accused. Altogether three persons were found in the house and the Excise party was able to apprehend only two out of them. The 3rd person who made good his escape from the house was the petitioner.

5. I am not satisfied that both the grounds enumerated under section 41A(b)(ii) of the Abkari Act are present in this case so as to justify the release of the petitioner on bail. The fact that accused 1 and 2 have been granted bail under the proviso to section 167(2) Cr.P.C. may not be a ground to enlarge the petitioner on bail since the petitioner's belated request for default bail made in B.A.6880/06 was turned out by this court noticing that final report had in the meanwhile been filed. I see no ground to grant bail to the petitioner.

This petition is accordingly dismissed.

V.RAMKUMAR, JUDGE

dsn